

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,
ANTHONY D'AQUILA, MICHAEL O'TOOLE,
MICHAEL BOURGAL, FRANK H. FINKEL,
JOSEPH A. FERRARA, SR., MARC HERBST,
DENISE RICHARDSON, and THOMAS CORBETT
as Trustees and fiduciaries of the Local 282 Pension
Trust Fund,

Plaintiffs,

– against –

AUBURNDALE MASON SUPPLY, INC.,

Defendant.

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JOSEPH F. BIANCO, District Judge:

On January 13, 2017, this Court entered default judgment against defendant and referred the matter of damages to Magistrate Judge Steven I. Locke. (ECF No. 22.) On June 30, 2017, Judge Locke issued a Report and Recommendation (the “initial R&R”), recommending that plaintiffs be awarded \$217,176.00 in withdrawal liability, \$123,790.32 in interest, \$123,790.32 in liquidated damages, and \$635.62 in costs. (ECF No. 24.) The initial R&R also recommended that plaintiffs’ motion for attorney’s fees be denied, but that plaintiffs be granted leave to resubmit an affidavit providing the details necessary for a calculation of such fees. (*Id.*)

On July 13, 2017, plaintiffs objected to the portion of initial R&R in which Judge Locke recommended that plaintiffs’ motion for attorney’s fees be denied, and plaintiffs provided the information Magistrate Judge Locke discussed. (ECF No. 26.) On July 26, 2017, the Court adopted the initial R&R in its entirety and referred the matter again to Judge Locke for a Report and Recommendation to address the issue of attorney’s fees. (ECF No. 28.) On December 22, 2017, Judge

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LONG ISLAND OFFICE

ORDER
CV 16-2636 (JFB) (SIL)

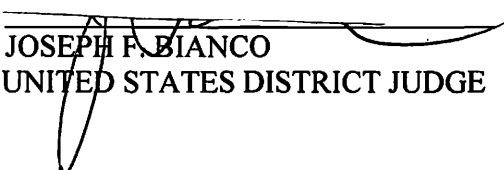
Locke issued another Report and Recommendation (the “R&R”), recommending that plaintiffs’ motion for \$12,445.00 in attorney’s fees be granted. (ECF No. 29.) A copy of the R&R was served on defendant on December 27, 2017. (ECF No. 30.) Judge Locke directed that any objections to the R&R be filed within fourteen (14) days of receipt of the R&R. (ECF No. 29 at 11-12.) The deadline has since passed, and no party has filed an objection.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that plaintiffs are awarded \$12,445.00 in attorney's fees. IT IS FURTHER ORDERED that, by February 9, 2018, plaintiffs' counsel shall submit a proposed default judgment consistent with the amounts ordered by the Court. IT IS FURTHER ORDERED that plaintiffs shall serve a copy of this Order on defendant and file proof of service with the Court.

SO ORDERED.


JOSEPH P. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: January 26, 2018
Central Islip, New York